

THOMAS E. MOSELEY
One Gateway Center—Suite 2600
Newark, New Jersey 07102
TM 3371
(973)-622-8176
Attorney for Defendant Marco Paulo Rebelo

UNITED STATES OF AMERICA,

Plaintiff,

-against-

MARCO PAULO REBELO,

Defendant.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 01-2120 (HAA)

Honorable Harold A. Ackerman

Defendant's Statement Pursuant To L

Civ. R. 56.1

Defendant, by his undersigned attorney makes the following statement of undisputed fact pursuant to L. Civ. R. 56.1:

1. Defendant Marco Rebelo ("Mr. Rebelo") was born on June 27, 1973 and came to this country with his parents on January 26, 1981. Declaration of Alfred Parra ("Parra Decl."), Exhibit A.

2. His family settled in Elizabeth, New Jersey and he attended Jefferson High School, but dropped out in the 12th grade. Declaration of Thomas E. Moseley, Exhibit A (Deposition of Marco Rebelo ("MR Dep") at 24.

3. He attended a program at Lincoln Tech for diesel engineering, which he was unable to complete. MR Dep at 23. Since then he has worked as an autobody repairman and mechanic. MR Dep. at 23—28. In 1995, when he was 21 years old, he was living with his mother and father at 22 Summer Street in Elizabeth.

4. On the morning of May 14, 1995, Mother's Day, he received a call from a friend informing him that his brother Fernando had been arrested a block away from home. MR Dep at 28.

5. He woke up his father, who left the house ahead of him to go to the scene. MR Dep at 28.

6. When Mr. Rebelo got there, his father was talking with the police, and Marco, seeing his brother in the back seat of the police car with his shirt ripped, asked which officer had beaten up his brother. MR Dep at 30.

7. At that point, police officer Gramiak got out of the police car and confronted Mr. Rebelo, asking "Do you want to fight me?" MR Dep at 30-31. The officer then grabbed Mr. Rebelo, threw him against the car, and started to choke him, which Mr. Rebelo resisted, biting the officer's arm. MR Dep at 30—31. The other officer got out of the police car, punched Mr. Rebelo in the ribs and maced him. MR Dep 30—31. Yielding to this force, Mr. Rebelo was arrested, taken to the hospital for his injuries, and later charged with several offenses included aggravated assault. MR Dep at 30—36.

8. In addition to Mr. Rebelo and his brother Fernando, his 53 year old father was also arrested and charged with the same offenses as Mr. Rebelo. MR Dep at 40, 44. Moseley Dec., Exhibit B.

9. After Mr. Rebelo's mother posted bail, the family consulted Nelson Monteiro, the family attorney, about the pending criminal charges. As a result, Nelson Monteiro represented Mr. Rebelo's father and brother, and John Ammiano, who worked out of Nelson Monteiro's office, represented Mr. Rebelo. MR Dep at 41.

10. The case against Mr. Rebelo's brother was later dismissed with a reckless driving ticket, while the case against Mr. Rebelo's father, who had the same several charges as those against Mr. Rebelo himself were eventually dropped down to a disorderly persons offense, with everything else dismissed. MR Dep at 44.

11. At the urging of Nelson Monteiro, Mr. Rebelo, his mother, father, and brother went to a community meeting in the basement of the Our Lady of Fatima Church in Elizabeth, New Jersey on June 11, 1995 to sign naturalization applications along with many other members of the local community. MR Dep. at 63, 97.

12. The naturalization applications had been urged on him and his family so that they would be able to vote for a candidate favored by Mr. Monteiro. MR Dep at 97.

13. When the time came for Mr. Rebelo to answer the question about his arrest on the naturalization application, Mr. Rebelo consulted Nelson Monteiro, the family attorney, who had accompanied the Rebilos to the church. MR Dep at 90—95. The advice that Mr. Monteiro gave was that the question should be answered by what he anticipated the disposition to be charges would be, namely a disorderly persons offense with the rest dismissed. MR Dep at 90—95.

14. The supplement to the naturalization form (N-400) embodying Mr. Monteiro's advice was not in Mr. Rebilo's handwriting. MR Dep. at 94.

15. The response given by Mr. Rebelo on this question was made in the good faith reliance upon the advice of his family attorney and in the good faith belief that this was proper response. Mr. Rebelo did not wilfully make a make a misrepresentation of fact and did not intend to deceive anyone with this response.

16. As required by the instructions on the N-400 itself, Mr. Rebelo's fingerprints were also taken as part of this application so that INS could check his criminal record with the FBI.. MR Dep at 84, 94.

17. After fingerprinting and photographs, Mr. Rebelo left the completed application with the church group. MR Dep at 103. The application was then submitted and received by the Newark District of INS on July 5, 1995. Parra Dec., Exhibit A.

18. The fingerprints received by INS with Mr. Rebelo's application were sent to the FBI.

19. Mr. Rebelo's criminal case was the last one slated for disposition and he appeared in Union County Superior Court on July 6, 1995. MR Dep at 100. As of that date, the case had not been indicted.

20. On July 6, 1995, the Union County Prosecutor insisted on a plea to an indictable offense, when Mr. Rebelo appeared. That day an accusation was submitted by prosecutor and plea agreement struck, both dated July 6, 1995. Montana Dec., Exhibit N.

21. Mr. Rebelo entered a guilty plea that day to one count under N.J.S.A. §2C:12-1b. Montana Dec., Exhibit N. In accordance with the plea agreement, he was sentenced on September 8, 1995 to probation. Montana Dec., Exhibit N.

22. August 31, 1995, then INS Commissioner Doris Meissner, announced "Citizenship USA," a well publicized initiative to speed up naturalization applications and reduce the backlog of pending applications to six months. OIG Reprt at 1.

23. Two months later, on October 31, 1995, the Newark INS District Office approved Mr. Rebelo's application. Parra Dec. ¶8.

24. The officer approving the application, Mr. Parra, did not wait for a report from the FBI with respect to Mr. Rebelo's fingerprints.

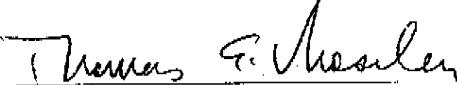
25. INS practice required a report from the FBI before approval of the naturalization application. OIG Report, *passim*.

26. On before October 31, 1995 Mr. Rebelo's arrest record, his guilty plea, and his sentence were a matter of public record and in the files of the FBI.

27. The files of the FBI contained Mr. Rebelo's arrest record, his guilty plea and his sentence on or before April 1996.

28. The present action was commenced on May 2, 2001.

Dated: Newark, New Jersey
July 5, 2004


THOMAS E. MOSELEY
One Gateway Center--Suite 2600
Newark, New Jersey 07102
Tel. (973) 622-8176
Attorney for Marco Paulo Rebelo